IN THE

Supreme Court of the United States

October Term, 1951.

No. 143.

VERNA LEIB SUTTON,

Petitioner,

vs.

R. WELLS LEIB,

Respondent.

REBUTTAL BRIEF OF PETITIONER.

JOHN ALAN APPLEMAN,
Urbana, Illinois,
Attorney for Petitioner.

JOHN ALAN APPLEMAN,
EDWARD D. BOLTON,
565 Fifth Avenue,
New York 17, New York,
Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

VERNA LEIB SUTTON, *Petitioner,* vs. R. WELLS LEIB, *Respondent.*	No. 143

REBUTTAL BRIEF OF PETITIONER.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Respondent has briefed two points of interest. They are as follows:

1. That petitioner voluntarily abandoned her right to alimony.

2. That a remarriage may be valid in Nevada, even though one spouse, supposedly divorced in that state, is not validly divorced and would, accordingly, be a bigamist.

As to the first of these questions it would be improper to join issue upon it at this time. The rules of this Court require that no issue be injected for the first time in this Court. It was never contended by the respondent, either in the District Court or in the Court of Appeals, that there was any abandonment by petitioner. Respondent there

claimed that there was a valid *release* by petitioner of the alimony obligation, upon which issue the Court of Appeals found against respondent. That court pointed out that there was a complete lack of consideration, since respondent paid nothing for any alleged release, except previously accrued alimony as to which he was in arrears. No cross error has been assigned by the respondent in this Court as to such holding.

However, we do want to correct the misleading statements of fact upon page 10 of respondent's brief, not supported by the record, which might lead this Court to believe the petitioner to be a loose woman. Respondent states: "A mature woman (21 years of age) was first married to respondent (who was 30 years of age) in 1924; twenty years thereafter, in 1944, she married Henzel, leaving her home in New York to go to Nevada for this purpose and knowing that he was in Nevada for the purpose of securing a divorce from his wife." (Matter in parenthesis interpolated.)

The facts in the opinion show that the petitioner and respondent were divorced in Illinois in 1939 (Tr., pp. 87; 5-6). It was subsequent to this time that the petitioner moved to New York, and she had been divorced for some five years when she entered into a ceremony with Henzel upon July 3, 1944. She ceased living with Henzel immediately when a question was raised concerning the validity of the Reno divorce, thirty days later. These facts all appear in the opinion of the Court of Appeals (see Petition, p. 19).

Upon page 8 the reply brief also contains this misstatement: "There was no decree of any court that her marriage to Henzel was void." This is untrue. There was an express decree of the New York court declaring such marriage to be null and void ab initio, as the result of a hearing in which both parties to such marriage were present, appeared, and contested the matter (Tr., pp. 27-29; 33-36).

As to petitioner being charged with knowledge of the efficacy of ceremonies, we need only point out that either counsel for the petitioner or counsel for the respondent is quite confused on the law governing this situation, and we should scarcely expect a layman to have more knowledge than such attorneys.

Since the question of abandonment has never before been raised by respondent, we shall not trouble this Court with a reply that analyzes the facts of the greatly different cases cited by respondent thereon, nor with questions dealing with the effect of mistake as to mixed questions of law and fact, the difference between a remarriage void as bigamous and one which is in violation of a directory statutory provision forbidding remarriage within one year, the fact that a waiver must be of a "known" right, and other matters. It is, of course, absurd to talk about a woman's reliance for support upon a second husband if she was never validly married to such second person, and he accordingly owes no legal duty to her. The Court of Appeals has pointed out that there was no valid consideration for a "release," as heretofore contended by respondent, and the respondent has not attacked the question of that court or the controlling effect of *San Fillippo* v. *San Fillippo,* 340 Ill. App. 353, cited by the Court of Appeals.

As to the second issue, however, the respondent, we believe, has failed to recognize the point made by petitioner's brief. It is this, simply. Neither New York nor Nevada can establish a result which will control in other states, unless both parties to the decree which is entered in such state either appeared personally in that forum or were served personally with process within the borders of that state. Such a decree is vulnerable to attack by any forum having the parties and subject matter properly before it. And where a decree is entered by such latter forum, thus invested with jurisdiction by having the parties before it and having power to adjudicate their status, *all* states must give full faith and credit to that decree. The mere

fact that a different state earlier entered a vulnerable decree will not excuse the refusal of such earlier state to extend full faith and credit to the subsequent decree of a competent court.

Either the petitioner is correct in believing that this is now the law of the land, or the recent decisions of this Court should be clarified which seemingly announce this result. There is no vacillation which we can find in this Court's recent adjudications. The respondent stands squarely upon the position that the Nevada decree is binding in the State of Nevada; the petitioner takes a directly opposite view, basing this belief upon the cases cited in the original brief, and which the respondent has not bothered to analyze or to distinguish. There is no middle ground of compromise. Either the respondent is right or the petitioner is right. The question is one of such controlling importance that it would be a mistake for this Court to fail to decide this question directly, upon the circumstances here presented. We ask only a full consideration by this Court and a result which will help to maintain consistency in the jurisprudence bearing upon full faith and credit.

Respectfully submitted,

JOHN ALAN APPLEMAN,
Attorney for Petitioner.

JOHN ALAN APPLEMAN,
EDWARD D. BOLTON,
Of Counsel.